Scott. H-29—27,004—25-11-28

Revenue (1926) Department.

Ordinary SERIES.

G.O. No. 1206

DATED 17.7.26

[Despatch Abstract.]

Suit - (South Kanara) - Coondapur District Munsiff's Court - O.S.No.256/26 - Fishing rights - Defence Sanctioned.

C.F. 81

Revenue **DEPARTMENT.**

CURRENT No. 1430-B

Received 10 JUL 1926 192 . *Registered* 10·7- 1926.

ASST. SECRETARIAT REVENUE DEPARTMENT

Subject.

Suits (South Kanara). - Coondapur District Munsiff's Court - O.S.No. 256/26 - Fishing rights - Defence.

ENCLOSURES.
No.
Spare copies

Reference A. No. 3388/26-1

Station Madras *Dated the* 9th July 1926. 192

From

W.Scott Brown, Esq., I.C.S.,
Secretary,
~~The~~ Board of Revenue ~~Revenue~~ Land Revenue and Settlement, ~~etc.~~ ~~Separate Revenue.~~

~~Resolution~~ Reference.

P.L.Moore, Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue.

**

ad the following:-

Letter from G.W.Wells, Esq., M.A., I.C.S., Collector of Dth Kanara, Ref. on A.3-3050-26, dated 29th June 1926.

One Kharvi Chandra and four others of Kodi village the Udipi Taluk have filed the above suit against Government and another Viz. Mutha.

2. The suit is for a declaration that they and other fishermen of the Kharvi Community in Hungarcutta, Kodi and Bengre hamlets of the Kodi village are entitled to fix stakes for fishing in the Hungarcutta river as a mamul right leaving a space of 420

feet from the shore for navigation and for a permanent injunction restraining the defendants from interfering with the enjoyment of the said right by the plaintiffs and for such other reliefs as the court may deem fit to grant.

3. The plaintiffs claim the mamul right of putting up stakes in the said river beyond 420 ft. from the shore saving that they and some others had executed a written agreement on 13th March 1880 wherein it was agreed that the various persons who had been enjoying the fixed places in the river for putting up stakes from time immemorial should continue to enjoy the sam undisturbed by any one. Plaintiffs also refer to the judgment in O.S. 6 of 1904 on the file of the District Munsif of Coondap in which the prohibited area is stated to be 420 ft. from the shore.

plaintiffs have not acquired a right as against the Crown ove any particular portion of this navigable river, that the manu right is not one exercised for 60 years or more. that there i nothing to show which exactly is the prohibited area, that the judgment in O.S. 6/1904 stating the prohibited area is not bindi on Government as it is between private parties, that the beds of all tidal rivers are vested in Government, that the river beds shift and change from time to time and that therefore the suit is not maintainable. In view of the Government Pleader's opinion and of G.O. No. Press 1941 Revenue, dated 25th August 1916, I recorded the suit notice. The plaintiffs have now filed a suit urging the same grounds.

6. I request that the Board may be pleased to sanction the defence of the suit and to approve the enclosed draft written statement prepared by the Vakil attending to Government suits in Coondapoor and slightly modified by the Government Pleader, Mangalore.

7. The suit stands posted to 5th July 1926. The plaint copy and notice dated 7th April 1926 were received on 10th April 1926; but the Vakil at Coondapoor sent the draft written statement only on 20th June 1926 after a wire was sent to him on 18th June 1926. The opinion of the Government Pleader, Mangalore, ha to be obtained and it was received on 26th June 1926. As the Board's orders on this reference cannot be received by 5th July 1926 to which date the suit stands posted, I have requested the Vakil at Coondapoor to apply for a month's adjournment and if it is refused, to file the written statement as prepared by him and modified by the Government Pleader with a representation to the court that it may be necessary to file a supplemental answer on receipt of orders of the Board.

8. The records noted in the margin are enclosed for reference

1. Copy of plaint.
2. Copy of written statement.
3. Huzur Dis file 4444-25 R, dated 15-1-1926.

4. Huzur Dis file 3242-D, dated 9-9-16.

5. L.Dis. 2485-25, dated 21-4-25.

6. Petition of Ganesha and 19 others dated 13-3-80.

7. Report dated 23-8-80 of the Port Conservator, Hungarcutta.

8. Petition dated 2-2-80 of certain Tindals.

RENCE

Submitted to Government for orders as the Port Conservancy and the Fishery Departments are also concerned.

2. The defence of the suit may be sanctioned and the draft written statement approved.

9/7

Secretary.

To the Secretary to Government, Revenue Department,

with records.

Copy to the Collector of South Kanara.

S.S./9-7.

9-7

In the Court of the District Munsiff, Coondapoor.

O. S. No.256/26.

Kharvi Chandra Tandal and others
on behalf of themselves and other Kharvi
fishermen of Kodi village. Plaintiffs.

a n d

The Secretary of State for India and
another. Defendants.

(Plaint under 7, R.1-2 C.P.C.)

The plaintiffs beg to state as follows:-

Plaintiffs 1. Kharvi Chandra Tandal-son of Ganesha Tandal-residing at Bangre, Kodi village, Udipi taluk.

2. Kharvi Rukma Tandal son of Venkatramana Tandal -do-

3. Kharvi Kusta Tandal son of Rama Tandal.

4. Manjunatha Tandal son of Sankappa Tandal.

5. Subbanni Tandal son of Kanya Tandal.

On behalf of themselves and other Kharvi Fishermen of Kodi village, Udipi taluk.

Plaintiff's address for service are as above.

2. Defendats 1. The Secretary of State for India in Council represented by the Collector of South Kanara.

2. Mutha son of Hoova residing at Bengre, Kodi village, Udipi taluk.

3. Plaintiff's and other Kharvy fishermen of hangarkatta Bengre and Kodi hamlets, kodi village, Udipi taluk and their ancestors have been from time immemorial or at least for the last 100 or 150 years-peacefully openly and uninterruptedly enjoying the exclusive customary right of fishing in the Hungarkatta river by placing stakes called 'Jugginaguta' for fixing nets across the stream having 420 ft. towards the sea for purposes of navigation. The kharvy community assigned several places to several people respectively according to the degree of status to which each belonged in the society and each of them has been placing stakes at the appointed place for the last 100 or 150 years if not more. As some disputes arose among the people of the kharvy community, a written agreement was drawn up on 13-3-1880, wherein it was agreed by all the

people that the various persons who had been enjoying the fixed places from time immemorial should continue to enjoy the same as before undisturbed by others and neither defendants nor any body else should have any right to oust them from those places. This mode of fishing by placing stakes has been the only mode of livelihood of the plaintiffs and if they are deprived of this right, they will be starved to death.

4. In the early part of 1925 the conservator of the port of Hangarkatta at the instigation of the 2nd deft. and his friends and partisans misled the Port Officer, Mangalore and induced him to issue an order to the plffs. on 14th Feb. 1925 directing them to remove the stakes from their positions on the alleged ground that the space of 420 ft. from shore set apart for navigation was insufficient for the purpose. Based on the suggestion of the Port Officer, the 1st deft. also issued a similar order on 21-4-1925.

5. About 15 years ago, the steamers of the B.S.N.& Co., were calling at the Hangarkatta port, and the export trade also was rather heavy in rice, paddy, timber, coir etc. For some reason or other, the trade in the said port has been declining and the steamers also do not call at this port at present. Moreover there were no complaints whatever either from the tindals of the vessels or from the local merchants, about any inconvenience felt for navigation.

6. Moreover it is rather curious and beyond ordinary comprehension that the space of 420 ft. which was quite

sufficient for free navigation for so many years when the port traffic was heavy is not now sufficient for free navigation when the trade has considerably gone down. This clearly shows that the order passed by the 1st defendant on 21st April 1925 was based on misrepresentation made by the Port Officer, Mangalore, which in turn was based on the report made by the Port Conservator at the instance of the 2nd defendant his partizans who have been the avowed enemies of plaintiffs.

7. The plaintiffs and other fishermen who have acquired exclusive sites for fishing have been unjustly deprived of their legitimate and exclusive rights and privileges, and their only means of livelihood.

8. Being highly aggrieved by the order of the Collector, the plaintiffs and their fellow fishermen sent a petition to the 1st defendant the Collector on 15th March 1925, but he passed the order referred to above on 21st April 1925. On 24th May 1925 plaintiffs sent the suit notice to the 1st defendant as required under S.80 C.P.C. but to no effect. Hence the suit.

9. The cause of action arose on 14th February 1925, when the stakes were removed under the orders of the Port Officer, in Kodi village, within the jurisdiction of this court.

Plaintiffs estimate the value of the relief for purposes of court fee and jurisdiction at Rs.80/-.

Plaintiffs pray for the following reliefs:-

1. Declaration that plaintiffs and other fishermen of the kharvi community in Hangarkatta kodi and Bengre hamlets, Kodi village, are exclusively entitled to fix their respective stakes for fishing nets across Hangarkatta river as per mamool right enjoyed by them from time immemorial and re-affirmed in the written agreement drawn up among the members of the kharvi community on 13th March 1880, leaving a space of 420 feet from the shore for navigation, openly peacefully and as of right without being interrupted by the defendants or anybody else, and that the 1st defendant has no manner of right to over-ride this mamool right

and to order that 630 feet should be left for navigation and that the 2nd defendant or anybody else have no manner of right to oust the plaintiffs and others of the kharvi community from the places respectively enjoyed by them from time immemorial and re-affirmed in the agreement of 13th March 1880. 50-0-

II. Permanent injunction restraining the defendants from interfering with the enjoyment by plaintiffs and others as mentioned in the 1 prayer. 25-0-0

III. Such other and further reliefs as the court deems fit to grant. 5-0-0

Total 80-0-0

Plaintiffs pray that the court may be pleased to grant the above reliefs in their favour and also costs of suit from the defendants.

15th March 1926.

True copy.

In the Court of the District Munsif of Coondapoor.

O.S.No. 256 of 1926.

Between:-

Kharvi Chandra Tandal and others on behalf of themselves and other Kharvi fishermen of Kodi village..... Plaintiffs.

and

The Secretary of State for India and another.. Defendants.

Written statement of 1st Defendant under Order 8 Rule 1 of C.P.C.

1. Plaintiffs' suit is vexatious, speculative and unsustainable in law as it does not comply with the provisions of the C.P.Code.

2. This defendant denies the exclusive customary right of fishing in the Hangarkatta river exercised from time immemorial or at least for the last 100 or 150 years in the manner alleged in the plaint or even for 60 years.

Agreement is enclosed in a Cover and attached to (X) It is in Canarese & no translation sent by Collr

3. The written agreement and the so called oral arrangement referred to in para 3 of the plaint are not binding as against the Crown; the said agreement is vague and indefinite and under any circumstances cannot affect the interest of the State.

4. Neither Plaintiffs nor other members of the Kharvi community have acquired a right of fixing stakes as against the Government over any particular portion of the navigable river in as much as beds of all tidal rivers are vested in Government and these river beds from time to time shift and change and as there is no grant of definite area made in their favour, they have been exercising their profession of fishing subject to the control of the authorities. In any case there is nothing to show which exactly is the prohibited area.

5. Under these circumstances, Plaintiffs have no right to

question the order of the Collector dated 21st April 1925 directing them to remove stakes from their positions where State purposes required that putting up of stakes for purposes of fishing within 630 ft. should be prohibited.

6. This defendant denies the truth of such of the allegations in the plaint as are not expressly admitted herein and puts the plaintiffs to strict proof of the same.

Plaintiffs are not entitled to the declaration and injunction sought for in the plaint..

8. Plaintiffs are not entitled to any reliefs in this is liable to be dismissed with costs.

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Office of the Board of Revenue,
Land Revenue and Settlement,
Madras, 27th July 1926.

P. L. Moore Esq., C.I.E., I.C.S.,
Commissioner of Land Revenue.

Refce., No.A.3388-26-2 dated 27th July 1926

The Board requests the orders of Government on its Reference noted below.

Secretary.

To the Secretary to Government, Revenue Dept.

Refce. No. A.3388-26-1 dated 9th July 1926.

Subject:-

Suits- (South Kanara) Coondapur District Munsif's Court- O.S. 256/26- Fishing rights- Defence.

Rev Dept

Rev C No. 1430/B/26 Suit - (South Kanara) - Coondapur Dt - Munsiff's Court - O.S No 256/26 - Fishing rights - Defence. from the Bd of Rev Ref A 3388/26-1 dated 9.7.26.

To Secy

Perusal is requested of the Collrs report on ff 1-3 Cf and the Bd's recommendation on f 4 Cf.

A suit has been filed in the Dt Munsifs Court Coondapur by certain fishermen of Hungarcutta & two other hamlets for a declaration of their rights to fix stakes for fishing in the Hungarcutta river, leaving a space of 420 feet from the shore for navigation

The facts which gave rise to the suit are as follows:-

The plaintiffs allege that they have been enjoying from time immemorial the right of fishing in the river leaving a space of 420 feet. The Conservator of the Port of Hungarcutta, in his proceedings of 14.2.25 prohibited the plaintiffs from putting up stakes within 630 feet from

the shore on the ground of inconvenience to navigation. Against this order, the plaintiffs appealed to the Coll. who however supported the order of the Post-Offt & directed that the plaintiffs "to fix stakes outside the channel "630 feet wide - set apart for navigation "purposes"

15th. the plaintiffs gave notice of a suit the Coll. Consulted the local Govt. Pleader and with reference to his opinion on ff 29-30 and 33-34 of the papers flag (X), recorded the notice. The plaintiffs have now filed a suit for declaration of their rights

The main contentions of the plaintiffs are

1) that they have been enjoying the right of fishing from time im-

exercised their right as ~~the~~ against
Govt for over the statutory period of
sixty years. In his letter at pp 35-36
of (X) the Colr pointed out that the
Port officer ~~pointed out in his letter~~
reported as far back as 1880 that the
1st plaintiffs' father & some others were
allowed to continue to put up stakes
because they ~~as~~ had acquired a
manorial right to put up stakes. The
local Govt Pleader thereon agreed that
this was an admission on the part
of Govt but held that it was not a
right exercised for over 60 years
against Govt, ~~and~~ that the beds of tidal
rivers are vested in Govt and that in
any case there is nothing to show what
exactly the prohibited area was. The
Colr relies upon the orders in GO No 1601
Rev dt 15.7.1916 (Confirmed in GO No
1941 Rev dt 25.8.1916) and the ruling
in I. L. R Madras 467.

The notification in GO No 1941 Rev
dt 25.8.1916 prohibits the fixing of stakes
in certain rivers in S. Kanara (of
which Sitanadi or Hungarcutta river is
one) which are not "private waters".
The term "private waters" is defined

in § 3(3) of the Indian Fisheries Act,
as "waters which the exclusive fore-

party to the suit (The Colli has not sent a copy of the Judgment, nor a translation of the agreement of 1880). The plea has been raised in para 3 of the written statement that the agreement is vague & indefinite and cannot affect the interest of the State.

It is submitted that the opinion of the Govt Pleader Madras may be obtained if considered necessary and he may also be asked to scrutinise the draft written statement if he considers that the suit can be successfully defended. ~~If there is any doubt about the success, of the [illegible] it is [illegible] [illegible]~~. The file may in the first instance go to Finance (Marine) for early remarks.

[illegible]
17.7.26
19.7.26

The suit should be opposed & the draft written statement may be

The facts of the case are given in the Rev. Dept. note on pages 1-2 ante. The plaintiffs contend that they have exclusive customary right of fishing in the Hungara Kotta river by placing stakes across the stream leaving 420 feet towards the sea for the purposes of navigation. The locality is within Port limits and the Port Officer Mangalore considers that a width of 63 feet from the shore is necessary for the purposes of navigation. The Govt. Pleader Mangalore, the Board of Rev. and the Rev. Dept. that the crum of the plaintiffs should be resisted.

18 7

As the Govt: Pleader and the Rev: Dept. apparently consider that the suit can be successfully defended, ~~[illegible]~~ the proposal to sanction the defence of the suit may be agreed to. Even if the suit is decided against Govt, action can, if necessary, be taken under Section 12(1) of the Indian Ports Act.

4. The case may be passed on to Dev:

Sd/ 20.7.26

I agree that the claim put forward in the plaint should be resisted.

20.7.26

Dev.

Marine no 20 20.8.8-1 / 20.7.26

Dev: 1851 II / 22.7.26 Yes

23.7.26

DEV. DEPTH.

Development may agree that the claim should be opposed.

[It may be noted that the Sitanadi river referred to in the notification of 1916 does not appear to be the same as the Hungarcutta river - vide the Udaipur Tahsil map put up. If it is, the notification is a sufficient evidence that the exclusive right claimed by the plaintiffs has been ~~[illegible]~~ interfered and that they had not resisted this interference]

The Sitanadi & the Swamanadi join to form a backwater at Hangarkatta. That I believe is the actual state of things.

Dev. 1851 II/26.1 23.7.26 15 37B.

Sp V.E

Rev. ~~2708 A~~ 24.7.26.

S/ RR 23.7.

23.7.26

Revenue no.

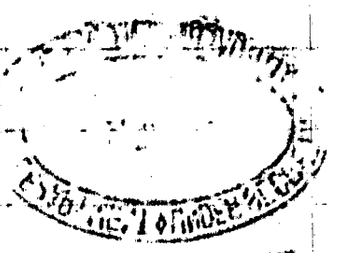
To US.

Finance (Marine) and Dev Dept agree that the suit shd be opposed.

A draft order is submitted

24.7.26

Better alter invite [illegible] attention to (2) at S. pls [illegible] for use in case the Court finds for plaintiff on the 42D [illegible] question



To US.

A revised draft order submitted (Perusal is requested the note portion M on p 3 of 1

Sectt. II-5 (b)—25,000—25-11-25. (6)

Revenue DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied		
When examined		
When signed		
When despatched		

READ AGAIN G.O. No. ....., dated 192

" " " " ..... " 192

READ ALSO:—

C. No. 14308/26 From the Bd of Rev (L.R.&S.) No. 3388/26-1, dated 9. 7. 1926

" " ..... " " ..... " 192

" " ..... " " ..... " 192

ORDER.

Mis

No. 1204, dated 27-7- 192

The Govt sanction the defence of the suit O.S. No. 256/26 on the file of the Dt Munsiff's Court, Coondapur, S. Kanara Dt and approve the draft written statement submitted by the Board of Rev.

2. If the Court finds for the plaintiffs on the issue whether they are entitled to put up stalls upto 420 feet beyond the shore, it is open to the Conservator of the

21

Post to proceed under § 12 of the Indian Posts Act, 1908.

26.7.26

27/7

27/7/26

§ 525 of the Unrepealed Gl Acts Vol VI

To

The Board of Rev with records ⊗ (LR & S).

Dev Dept

Finance (Marine)

28 ... 1928

29

⊗ 1) Collr L. Dir 2485/25 21.4.25

2) " Dir No 32428 of Rev 9.9.1916

3) R Dir 4444-25 18.1.2

4) one Cover containing the Agreement of 1880 by Kharpi fishermen.